

**BOARD OF SUPERVISORS OF YORK COUNTY
TRUSTEES OF THE TOWN OF YORK
JOINT AGREEMENT**

THIS AGREEMENT, made this ____ day of _____, 2001, by and between the **BOARD OF SUPERVISORS OF YORK COUNTY**, Virginia, party of the first part, hereinafter referred to as "Board," and **TRUSTEES OF THE TOWN OF YORK**, party of the second part, hereinafter referred to as "Trustees."

WHEREAS, the Board and the Trustees entered into certain written agreements, dated February 9, 1978, April 1, 1982, and October 29, 1987, wherein the parties reserved and/or granted certain rights and assumed certain obligations, all as therein set forth; and

WHEREAS, the Board and the Trustees desire to replace said agreements and to redefine the rights, privileges, and obligations of both parties; and

WHEREAS, the Board and Trustees recognize and acknowledge that each would benefit from a cooperative effort with the other, and the Board further recognizes and acknowledges that the Trustees constitute a viable entity which, by working with the Board under the terms and conditions of this Agreement, can provide valuable and needed services to the citizens of York County.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the premises and the sum of TEN DOLLARS (\$10.00) to each of the parties hereto paid by the other, and for other good and valuable consideration, receipt of all of which is hereby acknowledged, the parties do hereby agree as follows:

1. **DEFINITIONS**

The following terms, when used in this agreement, shall have the meaning indicated below except when the intent clearly appears to the contrary.

A. **Yorktown Pier**: A wood pier approximately 480 feet long, built, owned and operated by the Board from Water Street at the foot of Comte de Grasse Street (near Cornwallis Cave) extending into the York River to a cofferdam constructed by the Commonwealth of Virginia. For the purpose of this agreement, the Yorktown Pier shall include all associated improvements, including a kiosk located near Water Street, three concrete mooring dolphins, and all utilities.

B. **Yorktown Waterfront**: Approximately 1300 linear feet of waterfront property held in trust by the Trustees, located on the northeast side of Water Street between the intersection of Water and Read Streets and the eastern boundary of Assessor's parcel No. 18A-11D. The Yorktown Waterfront includes all property held in trust by the Trustees that was improved during 1978 with financial assistance from the Federal Land and Water Conservation Fund including the beach area and the Church Street stairs. For the purpose of this agreement, the Yorktown Waterfront also includes any

and all beach existing from time to time located northeast of the Virginia Department of Transportation's concrete sea wall located between Read and Comte de Grasse Streets.

C. Yorktown Wharf: A concrete wharf approximately 62' x 188' located on the York River approximately 270 feet southeast of the Coleman Bridge.

D. Ballard Street Pier: a pier proposed to be constructed, as depicted on the Conceptual Master Plan, at the foot of Ballard Street extended and to be owned and operated by the County.

E. Observation Pier: A pier proposed to be constructed as depicted on the Conceptual Master Plan in the same vicinity as the existing Yorktown Wharf and to be owned and operated by the Board.

F. Conceptual Master Plan: The term "Conceptual Master Plan" shall include the detailed concept plan for the Riverwalk (approved by the Trustees September 8, 1997) and the Waterfront/Wharf Area (plan dated and approved by the Trustees June 5, 2000 and attached as Exhibit A), and any subsequent duly approved amendments or additions thereto.

G. Consultation: The word "Consult" or "Consultation" used in this Agreement shall denote seeking information or advice from the other party to the extent deemed by the seeking party to be appropriate or necessary.

H. Approval: Use of the word "Approve" or "Approval" in this Agreement shall require formal consent by the party whose Approval is required (the Board and/or Trustees). Either party may require that confirmation of such Approval be in writing and shall be entitled to rely upon such writing, signed by the chairman or vice chairman, as conclusive evidence that Approval was given in the manner required by law, the rules of the approving body, and any other applicable rule or regulation and that the person so signing holds the office indicated.

I. Effective Date: The Effective Date of this Agreement shall be the date on which it shall have been fully executed by both parties.

2. COORDINATION BETWEEN BOARD AND TRUSTEES

The Board will keep the Trustees informed as to operation and maintenance activities and annually will summarize financial aspects of the operation and maintenance of the Yorktown Pier, Yorktown Waterfront, and the Yorktown Wharf. The Board and the Trustees each confirm and acknowledge that they have approved the Conceptual Master Plan, and that no further approvals are required of either party with respect to the Conceptual Master Plan except with respect to any modifications or amendments that may be proposed. The Conceptual Master Plan describes and graphically illustrates future development of the Yorktown Waterfront. The Conceptual Master Plan shall at all times conform to the York County Land Use Plan and Zoning Ordinance, and shall be the formal basis for all capital improvements to the Yorktown Waterfront including any revenue-generating facilities. After the date of this Agreement, the Board and Trustees may revoke or revise the Conceptual Master Plan, but any such revocation or revision shall require Approval of both the Board and Trustees. The Board may also develop and process for incorporation into the York County Land Use Plan a detailed Neighborhood Land Use Plan for Yorktown in order to insure that the Conceptual Master Plan prepared is compatible with and coordinated with the projected land uses in Yorktown.

3. FINANCIAL ASPECTS

A. Yorktown Fund Established: The Trustees and the Board hereby establish the Yorktown Fund for the purposes of operating, maintaining, repairing, and/or improving the Yorktown Pier, the Ballard Street Pier, the Observation Pier, Yorktown Waterfront, Yorktown Wharf, or any facility deemed by the Board to be beneficial to the Yorktown Pier, Ballard Street Pier, Observation Pier, Yorktown Waterfront and the Yorktown Wharf. The Yorktown Fund may not be used for any purposes that are inconsistent with the current Conceptual Master Plan.

B. Revenues for the Yorktown Fund: All revenue generated by the operation or use of the Yorktown Pier, the Ballard Street Pier, the Observation Pier, Yorktown Waterfront, and the Yorktown Wharf, including, but not limited to, fees, leases, rents, commissions, and contract proceeds, shall constitute a fund referred to as the Yorktown Fund and shall be deposited and administered as a separate account by the Board in accordance with the terms and conditions of this agreement. The Trustees shall be entitled to keep all revenue received from the Commonwealth of Virginia from the Department of Alcoholic Beverage Control to spend as Trustees deem appropriate. In addition, the Trustees shall be entitled to keep any and all other revenues which are restricted by the Grantor who provides same for use by Trustees. Except for funds which may be retained by the Trustees as aforesaid, the Yorktown Fund shall include all other grants, appropriations and payments received by the Board or the Trustees from governmental agencies, as well as private contributions made for the purposes of operating, maintaining, repairing, and/or improving the Yorktown Pier, Ballard Street Pier, Observation Pier, Yorktown Waterfront, and the Yorktown Wharf.

C. Disbursements from the Yorktown Fund: Disbursements from the Yorktown Fund shall be made at the direction of the Board in accordance with limitations contained in this Agreement. Disbursements for all renovation or improvement projects may only be made if said improvements are

consistent with the Conceptual Master Plan. All records and accounts shall be kept and maintained by the Board as fiscal agency for the Yorktown Fund in accordance with generally accepted accounting principles and the fiscal policies of the County and the Commonwealth of Virginia. All financial records and accounts relating to the Yorktown Fund shall be made available to Trustees for review at their request, or as otherwise allowed by law.

D. Uses of the Yorktown Fund: The Yorktown Fund shall be used exclusively for operating, maintaining, repairing, and/or improving the Yorktown Pier, Ballard Street Pier, Observation Pier, the Yorktown Waterfront, the Yorktown Wharf, or other facility deemed by the Board to be beneficial to the Yorktown Pier, the Ballard Street Pier, the Observation Pier, the Yorktown Waterfront or the Yorktown Wharf and consistent with the Conceptual Master Plan as then in effect, and also with the public interest, the conditions of the 1978 Land and Water Conservation Grant to the extent applicable, and other past or future State and Federal grants, and also for any costs incurred in administering the Yorktown Fund and carrying out any of the functions involved in realizing revenues or making disbursements. The Yorktown Fund shall not be used for any purposes that are inconsistent with the current Conceptual Master Plan. Disbursements may also be made to the Trustees in an amount equal to the Trustees' annual insurance premium for general liability insurance covering the Yorktown Trustees with respect to the operation of its properties as public facilities in the same manner and to the same limits as are in force for the Board with respect to the same operations and properties, provided, however, that the Board may instead, at its option, secure liability coverage by naming the Trustees as an additional insured under existing Board policy coverage, in which event the premium shall not be paid to the Trustees. After this agreement expires or is terminated, the Yorktown Fund shall be disbursed as provided in paragraph 10.E, below.

E. Yorktown Fund Budget: The Board shall prepare and adopt an annual budget and financial plan for the Yorktown Fund at the same time and in the same manner as the budget for the County of York. This budget shall provide for anticipated expenditures and shall reflect all revenues, including annual appropriations made by the Board necessary to finance these expenditures. Prior to adoption, the proposed annual budget and financial plan shall be sent to the Trustees.

F. Trustees' Budget: If requested by the Trustees, the Board agrees to pay an amount, within its discretion, up to a maximum of \$10,000.00 per year, to the Trustees for operating expenses. The amount of the maximum contribution shall be adjusted annually on each anniversary of the date of this agreement by a percentage equal to the percentage increase in the U. S. Consumer Price Index for Urban Areas, All Cities, during the same one-year period.

4. OPERATION AND MAINTENANCE OF THE YORKTOWN PIER, BALLARD STREET PIER, AND OBSERVATION PIER

A. Operation and Maintenance: The responsibility for the operation and maintenance of the Yorktown Pier, Ballard Street Pier, and the Observation Pier shall be the Board's, and they shall be used and maintained as the Board deems necessary or appropriate.

B. Receipts: All docking fees from the Yorktown Pier, Ballard Street Pier, or the Observation Pier shall be established and collected by the Board and deposited in the Yorktown Fund.

5. OPERATION AND MAINTENANCE OF THE YORKTOWN WATERFRONT

A. Promotion of the Health and Safety of Users: The Board may provide lifeguards as deemed appropriate by the Board for protection of swimmers, and it may employ further methods for protecting health and safety of the users of the Yorktown Waterfront, including regulation of the use of the Yorktown Waterfront and/or the establishment of user fees.

B. Control of Beach and Parking Areas: The Board shall, to the extent that it deems desirable, provide for such control over the beach and parking areas, regulate public conduct, and provide increased security as the Board deems appropriate. In Consultation with the Trustees, the Board may implement a control plan including one or more of the following:

- (1) a parking control system (Board may also provide free access or reduced fees for county residents and control said reduced parking fees through auto decals or otherwise);
- (2) a beach patrol (with or without user fees established by the Board).
- (3) physical controls in parking areas using gates to control hours of operation; and
- (4) posted hours of operation.

C. Police Protection: The Board shall secure police protection for enforcement of county ordinances at the Yorktown Waterfront through the York County Sheriff's Department and other enforcement agencies available from time to time. The Trustees agree to take any lawful action requested by the Board to enable the Board to secure enforcement or improve enforcement of ordinances and regulations through the Sheriff's Department and the courts. Nothing herein shall make the Board liable to the Trustees for any loss or damages arising from, or alleged to arise from, a failure to provide any such police protection.

D. Maintenance and Repair: At all times during the term of this Agreement, the Board shall maintain the property and facilities thereon in a condition commensurate with the level of care and maintenance provided to other public facilities in the County. Said maintenance and repair responsibility shall include, but is not limited to, litter pickup and removal, sidewalk and parking lot repairs; lawn cutting and maintenance; cleaning and maintenance of buildings; street and site lighting; care of all landscaping and planting beds; artificial beach nourishment; repair and adjustment of existing breakwaters; alterations of planting beds and landscape areas, and repair of existing structures. The Board shall define and determine, within its sole discretion, the scope and quality of appropriate maintenance activities and necessity of repairs, but nonetheless the Board shall comply with any maintenance provisions contained in any leases, license agreements, or permits entered into by the

Board with respect to any improvements constructed by the Board on the Yorktown Waterfront pursuant to subparagraph 5.E, below.

E. Improvements:

- (1) The Board, after consultation with the Trustees, and consistent with the Conceptual Master Plan, may make improvements to the Yorktown Waterfront including, but not necessarily limited to, the following:
 - (a) Installation of new offshore breakwaters or similar devices designed to prevent erosion and retain sand along the Yorktown Waterfront and Yorktown Pier;
 - (b) Construction of a new pier at the foot of Ballard Street (the Ballard Street Pier) and a new observation deck (the Observation Pier) at the foot of Buckner Street (extended) in the vicinity of the existing Wharf. Such facilities shall be owned by the Board and the Board may operate such piers in the same manner and to the same extent as with respect to the existing Yorktown Pier pursuant to Section 4, above;
 - (c) Construction of such other new buildings and facilities as are depicted on the Conceptual Master Plan. Such facilities may be for the purpose of housing retail uses, restaurants, public convenience facilities, museums and exhibit halls, visitor information centers, and such other uses as are compatible with the Conceptual Master Plan and consistent with the development of the Yorktown Waterfront as a tourist destination. At the request of the Trustees, such newly constructed building shall include a space not to exceed 400 square feet that may be used by the Trustees for an office and/or meeting place. With the prior approval of the Trustees, the Board may construct other buildings for purposes not identified above and not shown on the Conceptual Master Plan as it exists as of the effective date of this Agreement. The Board shall own any such buildings and facilities which it constructs and, with the exception of the breakwaters and Yorktown Pier, Ballard Street Pier, and Observation Pier, the Board's ownership interest shall be subject to termination only in accordance with the provisions of Section 10 – Term. The Trustees shall continue to own the land on which such other buildings and facilities are constructed. The Board's ownership of the breakwaters and the piers shall survive this Agreement.
- (2) With respect to any improvements referenced in subparagraphs E.1.b and E.1.c above, if construction of any improvement shall be abandoned prior to completion, or if the use of a completed structure shall be abandoned by the

Board, the Board shall demolish the structure and repair any damage to the Trustees' property caused by the demolition. Notwithstanding, if the Trustees present evidence satisfactory to the Board that the Trustees have or are able to obtain funding in an amount necessary to complete such construction and/or maintain the improvement, then, at the Board's option, the Board may convey such incompleated or abandoned structure to the Trustees and the Trustees shall thereafter complete and/or maintain such structure. For purposes of this subparagraph, the Board shall not be deemed to have abandoned any improvement unless the Board shall have ceased all use or construction with no intention of any further use of, or replacement of, the improvement and with no intention of seeking a lessee or occupant for the improvement. In the case of a pier, the Board shall not be deemed to have abandoned the use of the pier unless the shall have been closed to public use, with no repairs having been made nor any actions taken by the Board to commence repairs for a period of at least five years.

- (3) If the Board demolishes any pier referenced in this paragraph 5 with no intention by the Board to construct a replacement, then any easement granted by the Trustees pursuant to paragraph 8.C for the purpose of providing access to the pier shall be deemed vacated, and the Board shall execute such deeds or other documentation as may be reasonably necessary to evidence such vacation on the land records of the York County circuit court.
- (4) In the event that the Board seeks financing for any such improvements through the York County Industrial Development Authority ("the IDA"), both parties will cooperate in securing such financing and will comply with a reasonable request by the IDA to execute such documents and assurances as may be required in connection with such financing, provided that neither party shall be required to amend the terms and conditions of this agreement except as is provided in paragraph 10 below. Moreover, if the conditions of any such financing require that the IDA rather than the Board shall hold title to any such improvements, both parties agree that the IDA shall do so provided that the IDA shall agree to be bound by the terms of this agreement to the same extent as is the Board with respect to such property.

F. Utilities: The Board shall, during the terms of this Agreement, pay all utility costs associated with street and site lighting and the public restrooms, including the cost of electric, water and sewer service, and, after Consultation with the Trustees, shall determine the days and hours which street and site lighting shall be furnished and the public restroom building shall be operated.

6. OPERATION AND MAINTENANCE OF THE YORKTOWN WHARF

A. Promotion of the Health and Safety of Users: The Board shall, to the extent that it deems desirable, take steps to provide for the health and safety of the users of the Yorktown Wharf.

B. Future Use of Freight Shed Building (formerly the Yorktown Post Office): The parties agree that if the National Park Service transfers the title to the freight shed building currently located on the Yorktown Wharf to the Trustees, the Board shall relocate the building closer to Water Street as generally depicted on the Conceptual Master Plan. Both parties agree that the Board may utilize said building for purposes that are open to the public and that are compatible with the historic character and commercial uses of the area, and in accordance with applicable zoning laws and the current Conceptual Master Plan. Any revenue derived from the use of said building shall be established and collected by the Board and deposited in the Yorktown Fund. The Trustees hereby grant and convey to the Board the exclusive right to use, occupy, control and maintain the building during the term of this agreement, together with the right to relocate and renovate the building as set out in Exhibit B attached hereto, beginning as of the effective date of this agreement or as of such time as title to the building reverts to the Trustees, if later, subject, however, to the obligation of the Board to renovate and maintain the building as set out in Exhibit B. At the Board's request, the Trustees shall also transfer title to the building to the Board for the duration of this agreement. The parties also acknowledge and agree that in the event the building is deemed structurally impossible to move, or if it is damaged beyond practical repair during the relocation process, in the judgment of the Board's consulting engineers and contractors, the Board may demolish the freight shed and construct a replica of the building in the location depicted on the Conceptual Master Plan.

C. Wharf Demolition: It is agreed by the parties that subsequent to movement of the freight shed building, and in accordance with the Conceptual Master Plan, the Board will cause the Wharf to be demolished.

7. SPECIAL EVENTS

A. Special Events Sponsored by the Board: The Board shall have authority to sponsor and/or co-sponsor sailing regattas and various festivals and activities associated with the annual 4th of July and the Yorktown Day Celebration at the Yorktown Waterfront or the Yorktown Wharf. The Board shall also have the authority to sponsor other activities and events subsequent to informing the Trustees of the Board's plans to sponsor or co-sponsor any other activities or special events.

B. Special Events Sponsored by the Trustees: The Trustees shall Consult with the Board prior to sponsoring or co-sponsoring any special events. In order to avoid any conflicts in scheduling special events, the Trustees agree to secure the Board's concurrence prior to conducting said special event if it is proposed for a time or date during which another special event has already been planned by the Board. Trustees also agree to assume all liability for said special events, to arrange for any police protection if required, and to assume full responsibility for cleaning up the area within 24 hours after any special event.

8. AUTHORITY TO SELL PROPERTY OR TO GRANT LEASES, CONCESSIONS, OR EASEMENTS

A. Board's Authority Defined: During the term of this Agreement, the Board shall be authorized to grant leases, permits, concessions, or other rights of use of any or all of the property which is identified in this Agreement as Trustee-owned property (i.e., excluding Trustee-owned property not identified herein), insofar as the same shall be necessary or convenient in the opinion of the Board for the exercise of the Board's rights under the terms of this agreement. The Board agrees that said authority shall be exercised in conformance with the current Conceptual Master Plan. Notwithstanding the foregoing, the Board shall secure the approval of the Trustees for any lease, permit, concession or other similar right the term of which extends beyond the term of this Agreement as set out in paragraphs 10.A and 10.B. The Trustees' approval shall not be unreasonably withheld.

B. Trustees' Support of Board's Authority: Trustees agree to execute any and all leases, conveyances, or other documents when requested by the Board that are necessary or convenient in the opinion of the Board for the exercise of the Board's rights under the terms of this agreement. The Board agrees that said authority shall be exercised in conformance with the current Conceptual Master Plan and all applicable law.

C. Easements for the Yorktown Pier and Other Facilities: The Trustees shall, upon request, convey to the Board or other appropriate party at the Board's direction, easements to enable the Board and the public to maintain direct access and utilities to the Yorktown Pier, the Ballard Street Pier, and the Observation Pier and shall, upon request, execute documents as required to retain existing permits or maintain the use of existing structures or to acquire appropriate or necessary permits in the future. The Trustees also agree that all such easements and permits shall be perpetual except that the Trustees may propose substitute easements providing the same kind and quality of access to the piers as is provided by an original easement, and the Board's consent for the substitution of an easement shall not be unreasonably withheld.

D. Board's Approval Required: The Trustees covenant and agree not to do any of the following affecting the Yorktown Pier, the Ballard Street Pier, the Observation Pier, the Yorktown Waterfront, and the Yorktown Wharf during the term of this Agreement without prior written Approval by the Board:

- (1) grant or permit any concessions;
- (2) operate any concessions;
- (3) lease any of the property or grant any privileges or licenses applicable to the property;
- (4) grant any visual, scenic, historic, or other easements;

- (5) sell, convey, or otherwise dispose of the property or any part thereof or any interest therein.

9. INSURANCE

At all times during the term of this Agreement the Board shall maintain comprehensive full-value replacement coverage property insurance on all the facilities constructed, installed and maintained pursuant to the terms of the Agreement. Subject to necessary appropriations, the Board shall use any such insurance proceeds to restore any damaged facility as near to its original condition as is reasonably practicable. If in the event of a property loss, the Board has the opportunity to effect repairs and restoration through emergency grants, the Trustees agree to execute and honor any reasonable conditions or assurances consistent with this Agreement that may be required.

10. TERM

A. This agreement shall be in effect for a period of thirty (30) years from the Effective Date, except that it shall extend for a longer term under the circumstances set out in subparagraph B:

- B. (1) In the event the Board finances the construction of any aspect of the Conceptual Master Plan for a term of thirty (30) years, the term of the Agreement shall automatically be extended until one (1) year after the last debt payment, but the term of the agreement shall not extend beyond a total of 35 years without the express written approval of the Trustees.
- (2) In the event the Board has an opportunity to finance construction of any aspect of the Conceptual Master Plan with a grant that requires an assurance of Board control of the Yorktown Waterfront for a period longer than thirty (30) years, and the Trustees approve in writing the acceptance of those terms, the Agreement shall automatically extend for the duration of the grant-specified time limits.

C. The Board may terminate this Agreement at any time, with or without cause, upon giving the Trustees no less than one (1) year written notice to that effect. This Agreement shall automatically be renewed for additional ten (10) year terms unless written notice is given to either party at least one year prior to the expiration of the then –current term. Such notice to the Trustees shall be sufficient if given to any one of the Trustees and shall be sufficient as to the Board if given to the County Administrator or any member of the Board.

D. If this Agreement is terminated or not renewed for any reason by either party, as set out above, the Trustees agree to maintain the buildings, facilities and grounds, and the Board agrees to maintain the piers, in a condition equal to their condition at the time of termination for the duration of the useful economic life of such buildings, facilities and grounds, and piers (reasonable wear and tear

excepted), and to maintain public access to and use of said buildings, facilities and grounds, and piers. In addition, the Trustees agree to honor the terms of all leases, licenses, or concessions applicable to such buildings or improvements and any conditions and assurances that may be associated with grants obtained in connection with the improvements, provided that the Trustees shall have had the opportunity to approve any terms or conditions of any lease, license, concession, or grant that shall continue in effect after the date of the expiration of the terms of this Agreement as set out in paragraphs 10.A and 10.B, above. Moreover, title to County-owned buildings and facilities, other than the breakwaters and piers, shall be transferred to the Trustees, and the Board shall execute any deeds, assignments, or other documents as may be reasonably required to evidence the conveyance to the Trustees of all such buildings and assignment of all associated leases and permits, and shall assign or convey to the Trustees any security deposits or advance payments of rent that may be held by the Board with respect to any such leases and permits. During the term of this Agreement, the Board shall establish and maintain reserve accounts sufficient to pay for one year's estimated costs of maintenance and repair of any such improvements, or as may be required in accordance with the provisions of any applicable leases or permits, and upon the nonrenewal or termination of this Agreement shall transfer such accounts to the Trustees for the purpose of performing such maintenance or repair. The obligation of the Trustees to maintain buildings and other improvements pursuant to this paragraph shall only be to the extent of income derived from leases, permits and licenses with respect to such buildings and improvements, any reserve accounts transferred to the Trustees by the Board, and any other income (including grants) realized by the Trustees with respect to such buildings and improvements.

E. Upon such termination or non-renewal in accordance with this paragraph 10, the Yorktown Fund shall be distributed to the parties as follows: First, to the Trustees up to a sum equal to the amount by which the expected annual excess of operating and maintenance costs of any improvements constructed on the Yorktown Waterfront which are to be owned by the Trustees exceeds expected annual income from such improvements, as determined by a financial analysis of such income and costs. The financial analysis shall be performed by a person or company acceptable to both parties, and shall base estimates of income and costs on an analysis of income and costs of such improvements over the five previous years, as well as an analysis of the age and condition of the improvements and the likelihood and extent of any repairs that are expected to be incurred in the ensuing year. Second, the balance (if any) shall be disbursed to the Board.

11. DEFAULT

In the event of a default by either party, the nondefaulting party may seek specific performance of this Agreement in the York County Circuit Court as the sole remedy for such default, in which event the prevailing party shall be entitled to an award of attorneys fees and costs incurred in the prosecution or defense of such proceeding.

12. USE OF EASEMENT

The parties acknowledge that the Trustees own an easement for public passage 19.5 feet in width across a certain parcel of land owned by the Board and located at 400 Water Street, said

easement having been created by a deed recorded in Deed Book 72, pages 441-442. The Trustees hereby convey to the Board the right to construct improvements, to install landscaping, and to implement alterations in the grade and contour of the ground within the area encompassed by the easement, provided that such work or such improvements are for the purpose of providing public parking facilities, or a public park or open space (including, if desired by the Board, a stage and/or band shell for theatrical or musical performances), or other tourist-oriented and public recreational purposes generally consistent with the incorporation of the property into the overall development of the Yorktown Waterfront. The rights conveyed to the Board by this paragraph are not assignable and shall terminate upon the conveyance by the Board of the parcel over which the easement lies, except that any improvement constructed by the Board in accordance with this paragraph may continue to exist for so long as they are used for the purposes described herein. Nothing herein shall be deemed to limit the authority of the Board to use the land contained within the easement for purposes not inconsistent with the use of the easement by the Trustees. This provision shall survive the termination or nonrenewal of this Agreement.

13. LEGISLATIVE AND LEGAL ACTION

A. During the term of this agreement, neither party shall make any attempt to propose or support legislation before the Virginia General Assembly altering the terms and conditions of this agreement or the authority of either party to remain bound by this agreement or to fulfill its obligations hereunder. The Board shall not make any attempt to propose or to support any legislation dissolving the Yorktown Trustees.

B. During the term of this agreement, neither party shall institute or voluntarily file any petition or other legal action in any court of law for the purpose of challenging the legal authority of either party to enter into this agreement or to enforce or abide by any of its terms and conditions.

C. In the event that any part of this agreement is declared null and void by any court of law, such declaration shall not be deemed to operate as a termination of this agreement, and all remaining portions of this agreement shall continue in full force and effect.

14. TERMINATION OF ALL PREVIOUS AGREEMENTS

The Board and the Trustees hereby agree that those certain agreements dated February 9, 1978, April 1, 1982, and October 29, 1987, respectively, be, and they are hereby, cancelled and void and of no further force and effect as to either party.

15. DUPLICATE ORIGINALS

This agreement may be signed in duplicate originals, any one of which shall be deemed an original for all purposes.

16. RECORDATION

This agreement may be recorded among the land records of York County.

17. SUBJECT TO ANNUAL APPROPRIATIONS

If the performance by either party of any act or obligation pursuant to this agreement requires the expenditure or commitment of any public funds beyond the fiscal year in which this agreement becomes effective, so that such obligation to commit or expend funds constitutes long-term debt prohibited by Article VII, Section 10, of the Constitution of Virginia and statutes adopted in furtherance thereof, the performance of such act or obligation is subject to annual appropriations by that party. Nonetheless, the failure to so appropriate necessary funds shall not operate to void this agreement in its entirety, but shall only relieve such party of the performance of such obligation or act. However, the other party shall be entitled to any remedies for nonperformance as may be available at law or at equity, provided that no such remedy shall be available which would violate any constitutional or statutory prohibition against the creation of long-term debt by a local governmental body. Both parties will act in good faith to appropriate such funds as may be necessary to the complete performance of the terms and conditions of this Agreement, to the extent that such funds are reasonably available without compromising the performance of other legal or moral obligations of either party.

IN WITNESS WHEREOF, the Trustees have caused their name to be hereto subscribed by their Chairman or Vice-Chairman, either of whom being thereto duly authorized by action of the Trustees granting such authority at a meeting called and conducted in accordance with law on the 7th day of May, 2001, and the Board has caused its name to be hereto subscribed by its Chairman, he being thereto duly authorized by Resolution No. R 01-____, passed at a regular meeting of the Board called and conducted in accordance with law on the ____ day of _____, 2001.

BOARD OF SUPERVISORS OF YORK
COUNTY, VIRGINIA

By _____
Chairman

TRUSTEES OF THE TOWN OF YORK

By _____
Gregory S. Brezinski, Chairman, or Edith M. Elliott
Vice-Chairman, either of whom is authorized to
act on behalf of the whole body of Trustees

Approved as to form

County Attorney

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia, at large, do hereby certify that James S. Burgett, Chairman of the Board of Supervisors, whose name is signed to the foregoing writing bearing date on the ____ day of _____, 2001, has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand this ____ day of _____, 2001.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

I, _____, a Notary Public for the Commonwealth of Virginia at large, do hereby certify that Edith M. Elliott, Vice-Chairman of the Trustees of the Town of York whose name is signed to the foregoing writing bearing date on the ____ day of _____, 2001, has acknowledged the same before me in the jurisdiction aforesaid.

Given under my hand this ____ day of May, 2001.

Notary Public

My commission expires: _____

Exhibit A
Board of Supervisors of York County
Trustees of the Town of York
Joint Agreement

Yorktown Riverfront Improvements

Culliton Abbott and Partners, P.C.
Architects, Landscape Architects, Planners

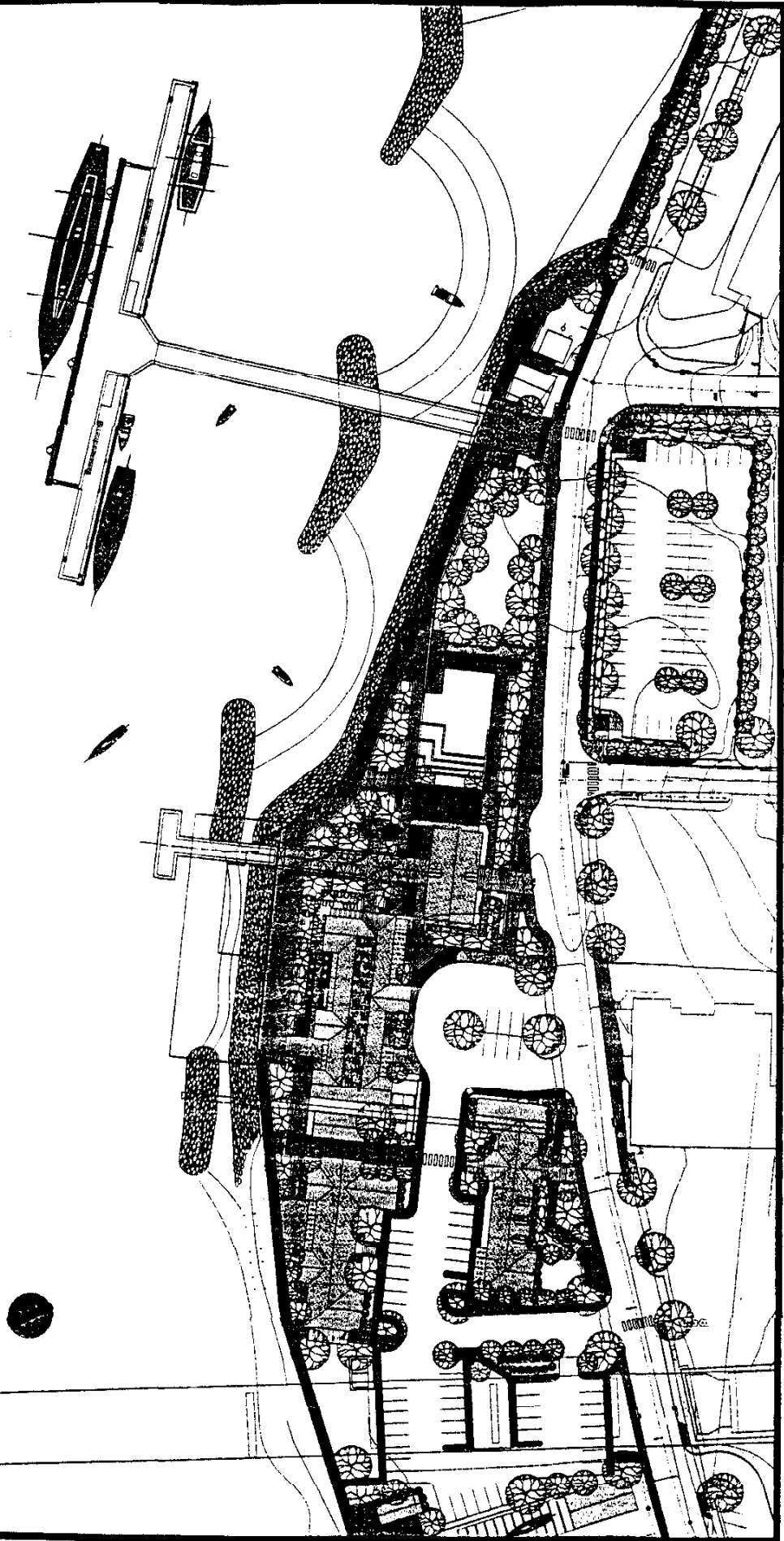


EXHIBIT B TO JOINT AGREEMENT

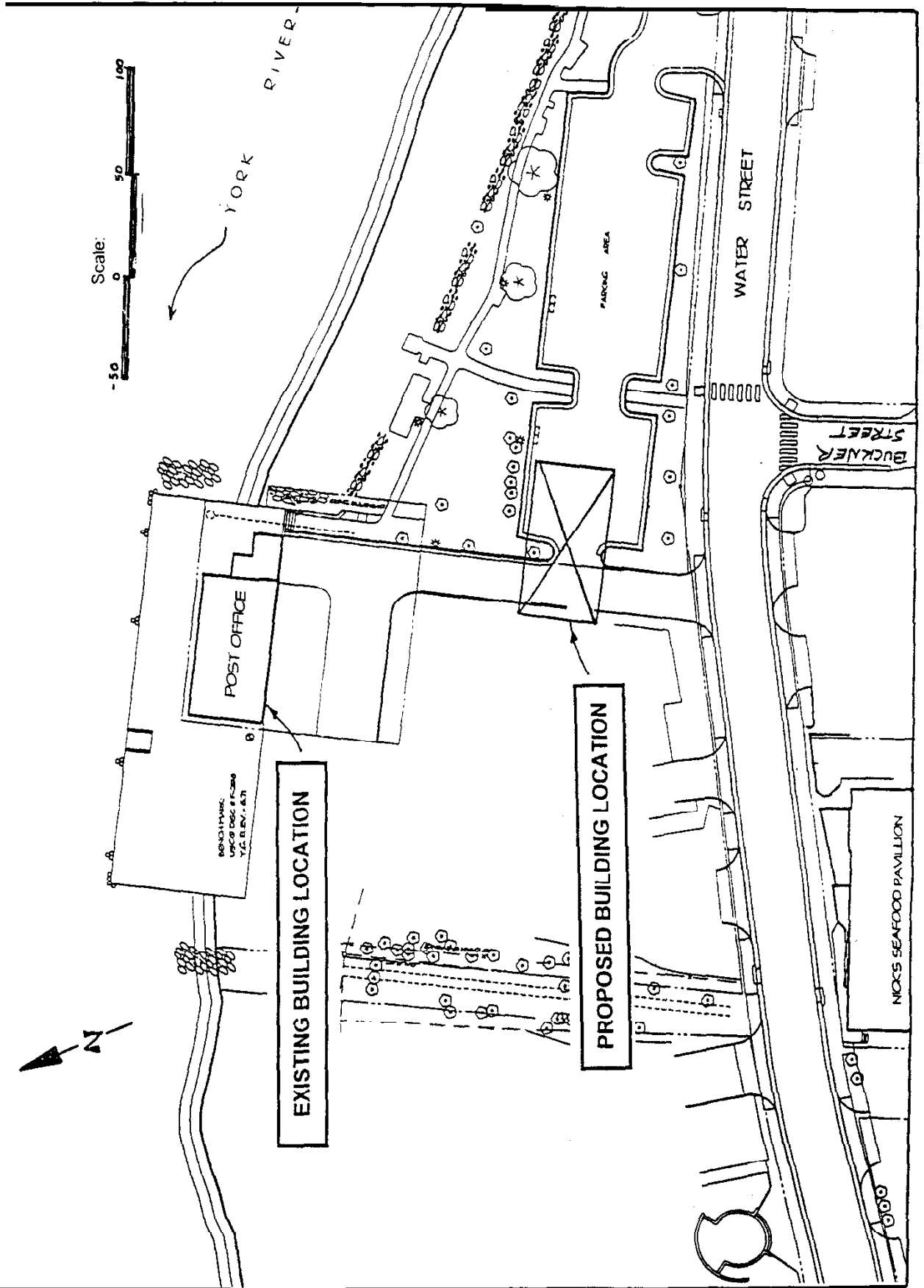
Terms and Conditions for Renovation and Maintenance of the Building

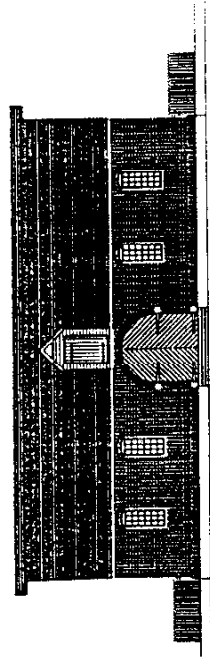
- A. Within two years of the date of conveyance of title to the Building, the County shall relocate the Building to a location generally as shown on the drawing depicted on Exhibit C, which is attached hereto and made a part hereof. In the event that an engineer employed by the County reasonably determines that the Building is damaged beyond reasonable repair during the relocation process, the County shall not be obligated to complete the relocation of the building and both the Trustees and the County shall be released from any obligation to renovate or maintain the Building.
- B. Once the Building has been relocated as described, the County shall renovate and maintain the Building as is set forth below, unless the parties mutually agree in writing to waive or modify any of the following conditions:
 - 1. Except as set out below, the County shall renovate or rehabilitate the Building so that the Building will have an appearance substantially similar to that which it had as of the date of this Agreement except as set out below. All references below to "north," "south," "east," or "west" shall be understood to refer to the Building's orientation in its current location.
 - (a) There shall be no loading dock on the east end of the Building.
 - (b) The west elevation shall have a board and batten door with wrought iron straps.
 - (c) Board and batten doors with wrought iron straps shall be installed in place of the large masonry in fill areas on the north and south elevations.
 - (d) The louvered panels in the second floor openings on the east and west elevations shall be removed and replaced with doors.
 - (e) The sash from the wall dormers on the north and south elevations shall be removed and replaced with board and batten doors with wrought iron strap hinges.

- (f) The first floor windows shall not have shutters or shutter hardware.
 - (g) The interior space shall not have any partitions.
 - (h) Concrete foundation simulating "timber cribbing" from the original wharf shall be constructed on the south side of the Building.
 - (i) To the extent permitted by utility companies, the Building will not have electrical meter boxes, surface mounted conduit, wire, or exhaust fans located on the exterior of the Building.
 - (j) The windows on the east and west elevations shall have nine/nine light double-hung sash windows with plank frames consistent with the windows on the south elevation.
 - 2. Once the Building has been renovated and/or reconstructed in its new location as generally shown on Exhibit C, it shall have an appearance that is generally as shown in the drawing labeled Exhibit D which is attached hereto and made a part hereof.
- C. The parties agree that the Building has "character-defining features" that give the Building its own unique identity and distinctive character. Character-defining features include the overall shape of the Building, and its materials, craftsmanship, and decorative details. The parties agree that the Building has the following character-defining features, which shall be preserved in the manner specified below to the extent reasonably practicable:
- 1. Renovations of the Building shall preserve the overall massing of the Building as seen from a distance as graphically illustrated by the drawing attached hereto as Exhibit D.
 - 2. Renovations shall incorporate the following details:
 - (a) Flemish bond brick walls with queen closures at corners; common bond brick watertable;
 - (b) Four 9/9 light double-hung sash windows with plank frames on the south elevation. Window openings have segmental arches;

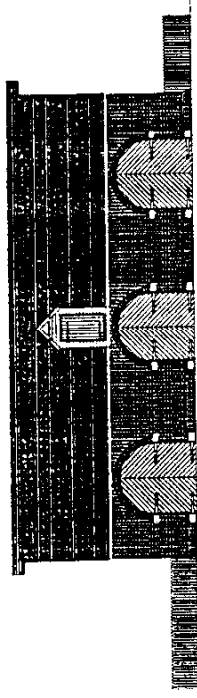
- (c) 9/9 light windows with plank frames on east and west elevations; window openings have segmental arches;
 - (d) Shingle roofing. The existing roof shingles may be replaced with new shingles that match the visual qualities of the original shingles, such as slate or cement;
 - (e) Dental cornice on the north and south elevations;
 - (f) Gable ridge projections protect hoist beam on both short elevations;
 - (g) Wall dormers centered on the north and south elevations with diagonal board siding on dormer cheeks; gable ridge projections protect hoist beams on each dormer.
- 3. Renovations of the Building shall restore the details listed below that were originally incorporated into the Building. The parties agree that other missing features may be replaced or restored at the County's option at any time to enhance the Building's character. Features that fall in this category include, but are not limited to:
 - (a) Horizontal bars on first floor windows;
 - (b) Exposed unplastered and unpainted finish on interior brick and terra cotta tile walls;
 - (c) Original interior lighting fixtures above suspended ceiling.
- 4. The parties agree that, except as noted in the immediately preceding subsection, there are no character-defining features in the interior of the Building. It is agreed that interior renovations and finishes will be designed to accommodate the intended function of the Building and may or may not include unconcealed roof trusses and other features of the original interior.
- D. The parties agree that the Building will be used for the purpose that is compatible with the historic character including, but not limited to, information and/or exhibit space or public assembly activity.
- E. The parties agree that the County shall maintain the character defining features of the Building as long as the County determines that it is structurally and financially feasible.

EXHIBIT C

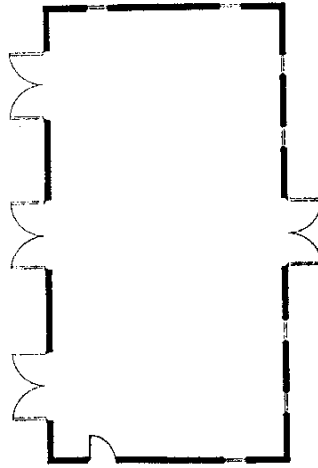




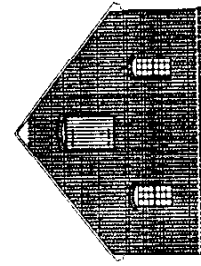
SOUTH ELEVATION
SCALE 1/8" = 1'-0"



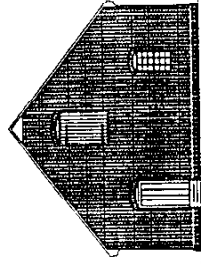
NORTH ELEVATION
SCALE 1/8" = 1'-0"



FLOOR PLAN
SCALE 1/8" = 1'-0"



EAST ELEVATION
SCALE 1/8" = 1'-0"



WEST ELEVATION
SCALE 1/8" = 1'-0"